

**STATE OF NEW MEXICO
WATER QUALITY CONTROL COMMISSION**

**IN THE MATTER OF FINAL TOTAL
MAXIMUM DAILY LOAD FOR
THE RIO CHAMA WATERSHED.**

WQCC No. 20-53

ORDER

THIS MATTER came before the New Mexico Water Quality Control Commission (“Commission”) for determination at its regularly scheduled meeting on October 13, 2020, without the filing of any request or petition by the New Mexico Environment Department (“Department”) for approval of the Final Total Maximum Daily Load (TMDL) for the Rio Chama Watershed. The Commission was informed on this matter by John Verheul, legal counsel for the Department, as follows:

§ 303(d) of the Federal Water Pollution Control Act, commonly known as the Clean Water Act (“federal Act”) requires each State to establish allowable TMDLs for certain pollutants for “water quality-limited” water bodies. *See*, 33 U.S.C. § 1313(d)(1)(C) (2000). The Commission is the “state water pollution control agency for [the State of New Mexico] for all purposes of the [federal Act]” NMSA 1978, § 74-6-3(E) (2007). The Department is required by law to provide technical services to the Commission, with respect to water quality standards and management. *See*, NMSA 1978, § 74-6-4(F) (2019). The Commission has assigned responsibility for activities related to water quality standards for surface waters, including the development of TMDLs, to the Department’s Surface Water Quality Bureau (“Bureau”).

The term “TMDL” is defined under federal regulation as “[t]he sum of the individual [Wasteload allocations] for point sources and [Load allocations] for nonpoint source and natural background.” 40 C.F.R. § 130.2(i) (2003). The process for developing TMDLs is specified in

Section IV(C) at page IV-3 of the *State of New Mexico Statewide Water Quality Management Plan and Continuing Planning Process* (“WQMP-CPP”) approved by the Commission on May 10, 2011. See, <https://www.env.nm.gov/surface-water-quality/wqmp-cpp/>. TMDLs, in accordance with §§ 303(d) and (e)(3)(C) of the federal Act and § 130.7 of 40 C.F.R. Part 130, are included in, or become elements of, a State’s WQMP. 40 C.F.R. § 130.6(c)(1) (2003).

A TMDL is not a final permitting action, compliance order, or regulation, as each of these terms are used in the current regulations issued by the Commission, and Commission approval of them is not subject to judicial review pursuant to NMSA 1978, Section 74-6-7 (2007). “... TMDLs are an informational tool. Their function is to assist stakeholders in planning and monitoring efforts to improve water quality so that water bodies achieve their State-set standards ... But they do not have regulatory force of their own ...” *Anacostia Riverkeeper, Inc. v. Wheeler*, 404 F.Supp.3d 160, 175 (D.D.C. 2019). “... [A] TMDL does not, by itself, prohibit any conduct or require any actions,” “[i]nstead each TMDL represents a goal that may be implemented by adjusting pollutant discharge requirements in individual [National Pollutant Discharge Elimination System] permits or establishing nonpoint source controls.” *City of Dover v. U.S. Environmental Protection Agency*, 36 F.Supp.3d 103, 109 (D.D.C. 2014). “A TMDL forms the basis for further administrative actions that may require or prohibit conduct with respect to particularized pollutant discharges.” *City of Arcadia v. U.S. Environmental Protection Agency*, 265 Supp.2d 1142, 1145 (N.D. Cal. 2003).

THEREFORE, having considered the above information provided by the Department and its counsel, together with their oral presentation at the October 13, 2020 meeting, and the proposed Final Draft TMDL for the Rio Chama Watershed, the Commission hereby approves the Final TMDL for the Rio Chama Watershed, a copy of which is attached to and made a part of this Order,

and the Final TMDL for the Rio Chama Watershed is hereby adopted and incorporated into the WQMP-CPP.

IT IS SO ORDERED.

Dated this 26th day of October, 2020.

Jennifer Pruett Digitally signed by Jennifer
Pruett
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Jennifer J. Pruett, Chair
New Mexico Water Quality Control Commission